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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/673,133	06/11/2002	Lisa E. Myers	1038-1102 MIS:jb	9490

7590 06/29/2006

Sanofi Pasteur Inc.  
Intellectual Property - Knerr Building  
One Discovery Drive  
Swiftwater, PA 18370

EXAMINER
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PAK, MICHAEL D

ART UNIT	PAPER NUMBER
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1646

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group II in the reply filed on April 14, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 1-5, 9-11 and 13 have been cancelled.

### ***Information Disclosure Statement***

2. Information disclosure statement (IDS) entered April 5, 2001 is an exact duplicate of IDS filed August 20, 2001.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 7 and 8 recites an improper Markush claim language because there is only one thing to select from.

Claim 14 provides for the use of a receptor protein, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

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Claim 14 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

4. Claims 6 and 12 are allowed.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Pak whose telephone number is 571-272-0879.

The examiner can normally be reached on 8:30 - 2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Nickol can be reached on 571-272-0835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1646

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Michael Pak  
Primary Patent Examiner  
Art Unit 1646  
12 June 2006